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Sub-Commission on Prevention of
Discrimination and Protection
of Minorities

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Item 10 (a) of the provisional agenda

ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF
DETENTION AND IMPRISONMENT

Report of the Secretary-General on the application of the death penalty
to persons under 18 years of age prepared pursuant to Sub-Commission
resolution 1989/32

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INTRODUCTION

1. By its resolution 1989/32 of 1 September 1989, entitled "Application of the death penalty to persons under 18 years of age", the Sub-Commission on Prevention of Discrimination and Protection of Minorities urgently appealed to all those Member States that at present apply the death penalty to persons under the age of 18 to take the necessary legislative and administrative measures with a view to stopping this practice forthwith, and requested all States in which the death penalty is currently applicable to consider the possibility of enacting legislation specifically prohibiting its application to persons under 18 years of age, in accordance with existing international standards.
2. The Sub-Commission further requested the Secretary-General to transmit this resolution to all Governments, requesting comments and information on their respective legislation in this matter, and to specialized agencies and non-governmental organizations for their comments on this issue, and to prepare a report for its consideration at its forty-second session.
3. Accordingly, the Secretary-General, on 21 February 1990, addressed appropriate inquiries to Governments, specialized agencies and non-governmental organizations. A copy of resolution 1989/32 was also transmitted with each note verbale or letter.
4. In conformity with Sub-Commission resolution 1989/32, the present report by the Secretary-General on the application of the death penalty to persons under 18 years of age, and containing the relevant information pursuant to this resolution received as of 16 April 1990 from Governments, specialized agencies and non-governmental organizations, is submitted to the Sub-Commission at its forty-second session.

I. INFORMATION RECEIVED FROM GOVERNMENTS

A. ARGENTINA

(Original: Spanish)

(6 April 1990)

1. Act No. 23,077, ratified by the Congress of the Nation on 9 August 1984 and promulgated by the National Executive on 22 August 1984, abolished the death penalty as a punishment under the Argentine Penal Code and Supplementary Laws.
2. Nevertheless, provision is made in the Code of Military Justice for the death penalty as an alternative punishment, but only for serious crimes, generally those committed during a "state of war".
3. On 5 September 1984, the American Convention on Human Rights (adopted by Act No. 23,054) entered into force in our country, making it illegal to restore the death penalty in the areas in which it has been abolished.
4. Similarly, art. 4 (5) of that Convention and art. 6 (5) of the International Covenant on Civil and Political Rights (adopted by Act No. 23,313, in force since 8 November 1986), which bind the Argentine Republic and have equal status with national laws (art. 31 of the Constitution), prohibit the application of the death penalty to persons who were under 18 years of age at the time the offence was committed.
5. As the foregoing indicates, the law in force in the country confirms the prohibition set forth in resolution 1989/32, "Application of the death penalty to persons under 18 years of age".

B. BELGIUM

(Original: French)

(4 April 1990)

1. The Government of Belgium has submitted this questionnaire, which was prepared for the fourth five-year report on the death penalty and has been duly completed by the Belgian Ministry of Justice.
2. Attention was drawn to the fact that this questionnaire also covers the "under 18 years of age" group, and that in any event the death penalty is no longer applied in Belgium.

I. Crimes punishable by the death penalty

(a) Ordinary criminal law

(i) Crimes against persons

1. Assassination (premeditated murder - Penal Code (P.C.) art. 394.
2. Parricide (murder of the father, mother or other legitimate ascendants or of the natural father or mother) P.C., - art. 395.

3. Poisoning (murder committed by means of substances that may cause death more or less rapidly) - P.C., art. 397.

4. Murder committed in an attempt to facilitate the following offences or to ensure that they remain unpunished:

(a) Theft or extortion - P.C., art. 475.

(b) The malicious or fraudulent destruction of registers, minutes or original records of a public authority, titles, promissory notes, bills of exchange, negotiable instruments or bank documents embodying an obligation, a disposal or a discharge - P.C., art. 526.

(c) The destruction of, or damage to, movable property belonging to another person - P.C., art. 532.

5. Attack:

(a) Against the life or person of the King, except, in the latter case, when the attack has not resulted in infringement of the King's liberty and when it has not caused him bloodshed, injury or illness - P.C., art. 101.

(b) Against the life of the heir apparent to the throne - P.C., art. 102.

(c) Against the life of the Queen, the King's direct relatives by blood or marriage, the King's brothers, having Belgian nationality, against the life of the Regent, or against the life of the ministers exercising, in the cases stipulated by the Constitution, the constitutional powers of the King, in cases where the attack tends towards an offence which is punishable by the death penalty under the Code (assassination, poisoning) - P.C., art. 103.

6. Hostage-taking:

(a) If the arrest, detention or abduction of the person taken hostage has caused either an apparently-incurable disease, permanent physical or psychological disability, the total loss of use of an organ, serious mutilation or death - P.C., art. 347 bis.

(b) If the criminals have subjected the person taken hostage to physical torture - P.C., art. 347 bis.

(ii) Crimes against property

A. Death penalty provided for by reason of the consequences of the act

1. Arson having caused the death of one or more persons who, to the perpetrator's knowledge, were in the place where the fire started at the time of the offence - P.C., art. 518.

2. The destruction by explosion of buildings, ships, boats, vehicles, wagons, warehouses, building sites or other structures, having caused death in the conditions provided for in subparagraph 1 above - P.C., art. 520.

3. The total or partial destruction or putting out of use, by any means whatsoever, of buildings, bridges, dykes, roads, railways or other structures belonging to another person, if the culprit knew that one or more persons were present at the time of the act and if the act resulted in death - P.C., art. 522.

4. The flooding, with malicious or fraudulent intent, of all or part of the works of a mine if circumstances indicate that the culprit knew that one or more persons were present in the mine at the time of the flooding and the act actually resulted in death - P.C., art. 547 and 548.

B. Death penalty in time of war

The following offences committed in time of war, either in places evacuated by the inhabitants because of war-related events, or during lights-out in places where it has been ordered by the competent authority (Decree of 13 May 1940 increasing the punishment of certain offences committed in time of war):

(a) Theft committed with violence or threats in an inhabited house or its outbuildings, in one of the following circumstances:

- (1) Through breaking and entering, scaling of walls or the use of skeleton keys;
- (2) By a public official through the exercise of his functions;
- (3) By one or more person having taken the title or insignia of a public official or used a forged official warrant;
- (4) At night by two, or more persons;
- (5) Through the use or display of weapons - P.C., art. 471, para. 2.

(b) Theft committed with violence or threats in public thoroughfares in one of the circumstances listed in subparagraph (a) above - P.C., art. 472.

(c) Theft committed with violence or threats in cases not covered in subparagraphs (a) and (b) above:

- (i) If the violence or threats have caused an apparently-incurable disease, permanent incapacity for work, total loss of use of an organ, serious mutilation or death - P.C., arts. 473 and 474.
- (ii) If the offenders have subjected the persons to physical torture (P.C., arts. 473 and 474), even when completion of the theft or extortion was prevented by circumstances beyond their control (P.C., art. 476).

(d) Destruction of, or damage to, movable property belonging to another person, during gatherings or in gangs, with use of violence or threats, in an inhabited house or its outbuildings, in one of the circumstances provided for in subparagraph (a) above. In such cases, the leaders and instigators are liable to the death penalty; the death penalty is also applicable to other offenders if the violence or threats by means of which the destruction or

damage was perpetrated have caused either an apparently-incurable disease or permanent incapacity for work, total loss of use of an organ or serious mutilation - P.C., arts. 530, para. 3, and 531 - cf. para. (i) (4) (c).

(iii) Crimes against the State

1. Plots or secret dealings with a foreign Power or with any person acting in the interest of a foreign Power, for the purpose of encouraging that Power to wage war against Belgium or obtaining the means for it to do so, if hostilities have ensued therefrom - P.C., art. 114.

2. The bearing of arms by a Belgian against Belgium or against an ally of Belgium acting against the common enemy - P.C., arts. 113 and 117.

3. The following acts or attempts to commit them:

(a) Facilitating entry by enemies of the State into the territory of the Kingdom;

(b) Handing over to them cities, fortresses, public squares, military posts, ports, warehouses, arsenals, vessels or ships belonging to Belgium;

(c) Providing them with assistance in the form of soldiers, men, money, provisions, weapons or ammunition;

(d) Assisting their military progress in the territory of the Kingdom or against Belgian land or naval forces, by undermining the loyalty of officers, soldiers, sailors or other citizens to the King and the State - P.C., art. 115.

The same acts or attempts to commit them carried out against Belgium's allies acting against the common enemy - P.C., art. 117.

4. The handing over or communication, or the attempted handing over or communication, in full or in part, in the original or in reproduction, to an enemy Power or to any person acting in the interest of an enemy Power, of objects, plans, writings, documents or information whose secret nature, with respect to the enemy, concerns national defence or the security of the State - P.C., arts. 116 and 120 quater.

The same acts or attempts to commit them carried out against Belgium's allies acting against the common enemy - P.C., art. 117.

5. In time of war, the handing over or communication, in full or in part, in the original or in reproduction, to a foreign Power or to any person acting in the interest of a foreign Power, of objects, plans, writings, documents or information whose secret nature concerns national defence or the external security of the State - P.C., arts. 118 and 120 sexies.

The same acts committed against a State with which Belgium is bound by a regional mutual-defence agreement - P.C., art. 120 octies.

6. The following acts:

- (i) (a) Participating in the transformation by the enemy of legal institutions or organizations;
- (b) Undermining the citizens' loyalty to the King and the State in time of war;
- (c) Knowingly serving the enemy's policy or designs;
- (ii) Knowingly directing, practising by any means whatsoever, instigating, aiding or fostering propaganda against resistance to the enemy or its allies or tending towards the acts listed in the preceding paragraph - P.C., art. 118 bis.

7. In time of war:

- (i) The handing over or communication, in full or in part, in the original or in reproduction, to any person not qualified to receive or have access to them of the objects, plans, writings, documents or information covered by art. 116;
- (ii) The reproduction, publication or disclosure, in full or in part, by any procedure whatsoever, of the objects, plans, writings, documents or information covered by art. 118, without authorization by the competent authority;
- (iii) Attempts to commit these acts - P.C., arts. 119 and 120 quater and sexies.

The same acts or attempts to commit such acts, carried out against a State with which Belgium is bound by a regional mutual-defence agreement - P.C., art. 120 octies.

8. In time of war, the act of obtaining, in full or in part, in the original or in reproduction, objects, plans, writings, documents or information covered by art. 118, or wilfully receiving them in the absence of authority to receive or have access to them - P.C., arts. 120 and 120 sexies.

An attempt to carry out this act - P.C., art. 120 quater.

The same act or an attempt, to commit that act, carried out against a State with which Belgium is bound by a regional mutual-defence agreement - P.C., art. 120 octies.

9. In time of war:

(a) Entering a port, any defence works, a military post, a ship of the State or a ship requisitioned or chartered by the State, a military, naval or aeronautical establishment, a depot, a military warehouse or zone, or a workshop, building site or laboratory where work that involves national defence is being conducted for the State in disguise or concealing one's identity, occupation, status or nationality, or using means whose purpose is to deceive the personnel on guard or to elude their vigilance;

(b) Through one of the means provided for in the preceding subparagraph, formulating a plan, reconnoitring communication routes, means of correspondence or long-distance transmission, or gathering information relating to national defence or the external security of the State.

(c) Organizing or employing any means of communication or long-distance transmission, for the purpose of collecting or transmitting information relating to national defence or the external security of the State, without having the authority to do so - P.C., art. 120 bis and sexies.

Attempts to carry out such acts - P.C., art. 120 quater.

These acts and attempts to commit them, carried out against a State with which Belgium is bound by a regional mutual-defence agreement - P.C., art. 120 octies.

10. (a) The act of hiding or causing to hide spies or enemy soldiers sent on scouting missions, and known as such.

(b) During a state of siege, the act of hiding or causing to hide enemy agents or soldiers, whether able-bodied or wounded, or lending them assistance to enable them to evade the authorities - P.C., art.121, paras. 1 and 2.

11. The act of deliberately exposing any person to search, prosecution or ill-treatment by the enemy, by reporting an actual or imaginary fact if, as a result of the detention or treatment suffered, the report has resulted, without the occurrence of a further act of reporting, in the death of any person or in an apparently-incurable disease or permanent incapacity for work or in the total loss of use of an organ or serious mutilation - P.C., 121 bis, para. 3.

12. Apart from arson and destruction already punishable by the death penalty pursuant to other provisions of the Penal Code (7 above, ii. A, Nos. 1-4), the following acts and attempts to commit them, carried out with intent to help the enemy - P.C., art. 122, para. 1, 4th case, and para. 2.

(a) Setting fire to buildings, ships, boats, warehouses, work sites or any other inhabited premises harbouring one or more persons at the time of the fire;

- buildings serving for meetings of citizens, for the duration of such meetings;
- any premises, even uninhabited, if, in the circumstances, the perpetrator should have realized that one or more persons were in the premises at the time of the crime - P.C., arts. 510 and 516.

(b) Setting fire, by night, either to any of the objects mentioned above in (a), but in cases other than those therein specified, or to forests, woods, bushes or standing crops - P.C., arts. 511 and 513.

(c) Destruction, by means of an explosion, of buildings, ships, boats, vehicles, wagons, warehouses, work sites or other structures, in the circumstances specified in (a) and (b) above - P.C., art. 520.

(d) Destruction of registers, minutes or original records of a public authority, titles, promissory notes, bills of exchange, negotiable instruments or bank documents embodying an obligation, a disposal or a discharge in the circumstances specified in No. (ii), B, (a), (b) and (c) above.

(e) The act mentioned in No. (ii), B, (d) above.

(f) The act of flooding entirely or in part the works of a mine if, in the circumstances, the offender should have realized that one or more persons were present in the mine at the time of the flooding - P.C., art. 547, para. 2.

(b) Military Penal Code: laws of war or other special laws

(i and ii) Crimes punishable by the death penalty under the Military Penal Code (Act of 27 May 1870 containing the Military Penal Code).

1. Treason - consisting of the act, by a member of the armed forces, 1/ of committing one of the offences punishable under articles 113-119 and 121-123 and 123 quater of the Penal Code - if the penalty specified by the ordinary Penal Code is that of death, life imprisonment or forced labour for life (Military Penal Code (MPC), art. 16); this is the case:

(A) with the offences mentioned in (iii) above under Nos. 1, 2, 3, 4, 5, 6, 7, 10, 11 and 12;

(B) with the following offences:

(a) the act mentioned in (iii) 1 above, even if hostilities have not ensued;

(b) the following acts and attempts to commit them, carried out with intent to help the enemy - P.C., art. 122, para. 1, 3rd case, and para. 2:

(1) The act specified in (iii) 12(b) above, even if not committed by night;

(2) Arson, by night, of harvested crops or timber that has been felled and piled up in heaps or steres - P.C., art. 512, para. 1, and art. 513;

(3) The act mentioned in (ii) A, 1 above, even if it has caused only injuries to one or more persons - P.C., art. 518, para. 1;

(4) The act mentioned in (ii) A, 3 above, even if it has caused only injuries to one or more persons - P.C., art. 518, para. 1;

(5) The destruction of registers, minutes or original records of a public authority, titles, promissory notes, bills of exchange, negotiable instruments or bank documents embodying an obligation, a disposal or a discharge, using violence or threats in an inhabited house or its outbuilding, even if only one of the circumstances enumerated in (ii), B, 1, (a), above is present or, if none of those circumstances are present, if committed on a public roadway - P.C., art. 471, para. 1 and art. 472, para. 1 - c.f. (iii), 12 (d), above;

- (6) The destruction of, or damage to, movable property belonging to another person, with the aid of violence or threats, either in an inhabited house or its outbuildings, accompanied by one of the circumstances enumerated in (ii) B, 1, above (P.C., art. 530, para. 1), or if carried out in a group or gang. In the latter case, the leaders and instigators are punishable by the death penalty (P.C., art. 529, para. 2); that penalty shall apply to the other offenders only if the violence or threats with the aid of which the destruction or damage has been carried out have caused an apparently-incurable illness or a permanent incapacity for work or the total loss of use of an organ or serious mutilation (P.C., art. 529, para. 1, and art. 531; c.f. (iii); 12, (e));
 - (7) The act specified in (iii), 12, (f), even without the aggravating circumstance mentioned therein - P.C., art. 547, para. 1.
2. Spying consisting, for a member of the armed forces, of the act of entering military premises, a military post or establishment, or the works, encampments, tents or barracks of an army in order to obtain therefrom documents or information in the interest of the enemy - M.P.C., art. 17.
 3. The act, by a general, governor or commandant, of capitulating to the enemy, or surrendering the place entrusted to him, without having exhausted all the means of defence at his disposal - M.P.C., art. 19.
 4. The act, by a general or commandant of an armed force, of capitulating in the open if, before negotiating or in the course of the negotiations, he has not done or stipulated everything required by duty and honour - M.P.C., art. 20.
 5. The act, by an officer, without being compelled to do so by superior forces, of abandoning in front of the enemy the post or position entrusted to him - M.P.C., art. 2.
 6. The act, by a soldier on sentry duty or vedette duty, or leaving his post without complying with his orders if he is in the presence of the enemy - M.P.C., art. 23.
 7. The act, by a member of the armed forces who is not on sentry duty, of abandoning his post, if he is in the presence of the enemy - M.P.C., art. 25.
 8. The refusal, by a member of the armed forces, to obey the orders of his superior, or deliberately refraining from carrying them out, when commanded in the line of duty, if he is in the presence of the enemy - M.P.C., art. 28.
 9. The participation by an officer in a mutiny in time of war and in an active unit of the army, the term "mutiny" being understood to mean "any resistance to the orders of their superiors effected simultaneously by more than three members of the armed forces together, when the order is given in the line of duty" - M.P.C., art. 31.
 10. Acts of violence committed in time of war and in an active unit of the army by a soldier against a superior, if the acts of violence have been committed with premeditation and have caused death - M.P.C., art. 39.

11. Murder committed by a subordinate against a superior while on duty or in connection with duty - M.P.C., art. 40.

12. Desertion to the enemy - M.P.C., art. 52.

13. In the event of repetition of an offence during the same war; a member of the armed forces already sentenced to two penalties for crimes punishable under chapters III (offences contrary to military duties), IV (insubordination and mutiny), V (acts of violence and outrages) and VI (desertion) of the Military Penal Code or by the Legislative Decree of 13 November 1915 on wilful mutilations, who commits a further offence punishable as a crime.

14. The acts specified in 1, 2, 10 and 11 above, if committed by:

(a) Civilian workers of the Ministry of National Defence;

(b) Supernumerary personnel occupying certain posts intended for military personnel of subordinate rank;

(c) Civilian personnel entrusted with the vocational training of militiamen - Code of Military Penal Procedure (C.M.P.P.), art. 3.

15. The acts specified in 1, 2, 10 and 11 above, if committed by a member of the armed forces on unlimited leave of absence 2/ - C.M.P.P. art. 4.

16. The acts specified in 10 and 11, if committed by a person no longer subject to military obligations against one of his former superiors or against any other person higher in rank in connection with the service relations he had with him - C.M.M.P., art. 9.

17. The Acts specified in 1 and 2 above, if committed by a prisoner of war or by an alien, even if not a soldier, who has taken refuge in time of war on Belgian territory - C.M.P.P. arts. 13 and 14.

18. The acts specified in 10 and 11 above, if committed by a prisoner of war, either against a higher-ranking member of the Belgian armed forces or against a higher-ranking member of his army - C.M.P.P. art. 13, D and E.

19. The act specified in 8 above, if committed by a prisoner of war, and if the order emanated from a member of the Belgian armed forces of higher rank than himself - C.M.P.P., art. 13.

(iii) Other crimes

A. Maritime crimes (Act of 5 June 1928 revising the Penal and Disciplinary Code for the Merchant Marine and Maritime Fisheries).

1. The act of seizing, or attempting to seize, a ship by means of violence or threats against the captain, without intent to kill, if the violence or threats nevertheless caused death, but only in the case of the officers or the leaders of the conspiracy - Arts. 33, 35 and 37 of the Act.

2. Murder committed to facilitate the crime mentioned under 1 above, even if the crime was not consummated, being prevented by circumstances beyond the control of the guilty parties - Arts. 36 and 37 of the Act.

3. The act, by the captain or pilot in charge of steering a vessel, of running it aground, destroying it, losing it or gravely damaging it by any means other than arson, with criminal intent, if the act has caused the death of one or more persons on board - Art. 67 of the Act - see for the case of arson: (a) (ii) A.1.

4. Murders committed in the course of acts of piracy - Art. 68 of the Act.

5. The act by the captain of a ship, of surrendering it to pirates and the act by members of the crew, of surrendering the ship to pirates, against the will of the captain - Art. 69 of the Act.

B. Crimes against the safety of air navigation (Act of 27 June 1937 revising the Act of 16 November 1919 relating to the regulation of air navigation, as amended by the Act of 20 July 1976).

The following offences, if they have caused the death of one or more persons:

1. The act or attempted act, of imperilling the navigability or flight safety of a private or State aircraft - Art. 30, para. 1, 1°, of the Act.

2. The act of seizing, or attempting to seize, a private or State aircraft, taking control thereof or diverting it from its route, through violence or threats or by any other means whatsoever - Art. 30, para.2, 2° of the Act.

II. RESORT TO CAPITAL PUNISHMENT

A. Sentences rendered

2. Have any death sentences been rendered during the period 1984-1988?

Yes	No
☒	☐

3. In what year was a death sentence last rendered?

B. Death penalties carried out

4. Have any of the death sentences thus rendered during the period 1984-1988 been carried out?

Yes	No
☐	☒

5. Have any of the death sentences rendered before 1984 been carried out during the period 1984-1988?

Yes	No
☐	☒

6. If there have not been any executions during the period 1984-1988, what was the date of the last execution?

From 1944 to 1950, 242 death sentences rendered for crimes against the security of the State were followed by execution.

The last execution following a death sentence for an ordinary crime took place on 26 March 1918.

III. QUANTITATIVE EVALUATION

Indicate, for each of the five years of the period 1984-1988, the total number of death sentences rendered and persons executed. If the death penalty has been abolished since then, complete the tables for the years prior to abolition.

7. Number of death sentences rendered and persons executed in 1984.

	MEN		WOMEN		TOTAL
	Under 18	Over 18	Under 18	Over 18	
Total sentences and executions					
A. Death sentences rendered in 1984:		4			4
For crimes against:					
Persons		4			
Property					
The State					
Drug legislation					
Other (specify)					
B. Death sentences rendered by:					
Ordinary courts					
Military courts					
Other courts (specify)	Assize Courts				

Total sentences and executions	MEN		WOMEN		TOTAL
	Under 18	Over 18	Under 18	Over 18	
C. Persons sentenced and executed in 1984:					
For crimes against:					
Persons					
Property					
The State					
Drug legislation					
Other (specify)					
D. Persons executed in 1984 after being sentenced in a previous year:					
For crimes against:					
Persons					
Property					
The State					
Drug legislation					
Other (specify)					
E. Persons under sentence of death:					
For crimes against:					
Persons					
Property					
The State					
Drug legislation					
Other (specify)					

	MEN		WOMEN		TOTAL
	Under 18	Over 18	Under 18	Over 18	
Total sentences and executions					
F. Decisions reversed or sentences commuted on appeal:					
G. Pardons or amnesties granted:	Automatic commutation of death sentences to forced labour for life, by means of pardon.				

8. Number of persons sentenced to death and persons executed in 1985.

	MEN		WOMEN		TOTAL
	Under 18	Over 18	Under 18	Over 18	
Total sentences and executions					
A. Death sentences rendered in 1985:		15		4	
For crimes against:					
Persons		9		4	
Property		4			
The State					
Drug legislation					
Other (specify)		2			
Art. 347 <u>bis</u> , P.C.:	Hostage-taking				
B. Death sentences rendered by:					
Ordinary courts					
Military courts					
Other courts (specify)	Assize Courts				

Total sentences and executions	MEN		WOMEN		TOTAL
	Under 18	Over 18	Under 18	Over 18	
C. Persons sentenced and executed in 1985:					
For crimes against:					
Persons					
Property					
The State					
Drug legislation					
Other (specify)					
D. Persons executed in 1985 after being sentenced in a previous year:					
For crimes against:					
Persons					
Property					
The State					
Drug legislation					
Other (specify)					
E. Persons under sentence of death:					
For crimes against:					
Persons					
Property					
The State					
Drug legislation					
Other (specify)					

Total sentences and executions	MEN		WOMEN		TOTAL
	Under 18	Over 18	Under 18	Over 18	
F. Decisions reversed or sentences commuted on appeal:					
G. Pardons or amnesties granted:	Automatic commutation of all death sentences to forced labour for life, by means of pardon. Among these sentences, one sentence was reduced to 25 years by means of pardon.				

9. Number of persons sentenced to death and persons executed in 1986.

Total sentences and executions	MEN		WOMEN		TOTAL
	Under 18	Over 18	Under 18	Over 18	
A. Death sentences rendered in 1986:		12		2	14
For crimes against:					
Persons		9		1	
Property		3		1	
The State					
Drug legislation					
Other (specify)					
B. Death sentences rendered by:					
Ordinary courts					
Military courts					
Other courts (specify)	Assize Courts				

Total sentences and executions	MEN		WOMEN		TOTAL
	Under 18	Over 18	Under 18	Over 18	
C. Persons sentenced and executed in 1986:					
For crimes against:					
Persons					
Property					
The State					
Drug legislation					
Other (specify)					
D. Persons executed in 1986 after being sentenced in a previous year:					
For crimes against:					
Persons					
Property					
The State					
Drug legislation					
Other (specify)					
E. Persons under sentence of death:					
For crimes against:					
Persons					
Property					
The State					
Drug legislation					
Other (specify)					

	MEN		WOMEN		TOTAL
	Under 18	Over 18	Under 18	Over 18	
Total sentences and executions					
F. Decisions reversed or sentences commuted on appeal:					
G. Pardons or amnesties granted:	Automatic commutation of death sentences to forced labour for life, by means of pardon.				

10. Number of persons sentenced to death and persons executed in 1987.

	MEN		WOMEN		TOTAL
	Under 18	Over 18	Under 18	Over 18	
Total sentences and executions					
A. Death sentences rendered in 1987:		18		1	19
For crimes against:					
Persons		11		1	
Property		7			
The State					
Drug legislation					
Other (specify)					
B. Death sentences rendered by:					
Ordinary courts					
Military courts					
Other courts (specify)	Assize Courts				

Total sentences and executions	MEN		WOMEN		TOTAL
	Under 18	Over 18	Under 18	Over 18	
C. Persons sentenced and executed in 1987:					
For crimes against:					
Persons					
Property					
The State					
Drug legislation					
Other (specify)					
D. Persons executed in 1987 after being sentenced in a previous year:					
For crimes against:					
Persons					
Property					
The State					
Drug legislation					
Other (specify)					
E. Persons under sentence of death:					
For crimes against:					
Persons					
Property					
The State					
Drug legislation					
Other (specify)					

	MEN		WOMEN		TOTAL
	Under 18	Over 18	Under 18	Over 18	
Total sentences and executions					
F. Decisions reversed or sentences commuted on appeal:					
G. Pardons or amnesties granted:	Automatic commutation of death sentences to forced labour for life, by means of pardon.				

11. Number of persons sentenced to death and persons executed in 1988.

	MEN		WOMEN		TOTAL
	Under 18	Over 18	Under 18	Over 18	
Total sentences and executions					
A. Death sentences rendered in 1988:		7			7
For crimes against:					
Persons		1			
Property		6			
The State					
Drug legislation					
Other (specify)					
B. Death sentences rendered by:					
Ordinary courts					
Military courts					
Other courts (specify)	Assize Courts				

Total sentence and executions	MEN		WOMEN		TOTAL
	Under 18	Over 18	Under 18	Over 18	
C. Persons sentenced and executed in 1988:					
For crimes against:					
Persons					
Property					
The State					
Drug legislation					
Other (specify)					
D. Persons executed in 1988 after being sentenced in a previous year:					
For crimes against:					
Persons					
Property					
The State					
Drug legislation					
Other (specify)					
E. Persons under sentence of death:					
For crimes against:					
Persons					
Property					
The State					
Drug legislation					
Other (specify)					

	MEN		WOMEN		TOTAL
	Under 18	Over 18	Under 18	Over 18	
Total sentence and executions					
F. Decisions reversed or sentences commuted on appeal:					
G. Pardons or amnesties granted:	Automatic commutation of death sentences to forced labour for life, by means of pardon.				

C. COLOMBIA

(Original: Spanish)
(1 March 1990)

1. In the colonial era, the Spanish laws applicable in Colombia provided for the application of the death penalty. This rule remained in force after independence in 1810.

2. In 1833, a law was enacted imposing the death penalty for political offences; to that end, it established what was virtually a summary procedure. The Act of 2 May 1849 abolished the death penalty for political offences but left it in force for ordinary offences and granted the Supreme Court of Justice the power to commute it.

3. Article 15 of the 1863 Constitution recognized "the inviolability of human life", by virtue of which the General Government and the Government of the States pledged not to provide for capital punishment in their legislation.

4. However, the death penalty was restored under the régime of General Rafael Núñez.

5. Original article 29 of the 1886 Constitution provided for the death penalty for persons responsible for high treason, parricide, murder, arson, assault in gangs, piracy and certain offences of a military nature.

6. Years later, during the constitutional reform of 1910, Legislative Act No. 3 stipulated that "The legislature may in no circumstances impose the death penalty". This provision is currently enshrined in article 29 of the Colombian Constitution.

7. The provision in article 29 is to Colombia's credit, since it places Colombia among those countries which, for humanitarian and criminal-policy reasons, have removed this aberrant legal provision from their codes.

D. CZECHOSLOVAKIA

(Original: English)
(20 March 1990)

Czechoslovak legislation in the above-mentioned matter is as follows:

Section 29, paragraph 4, of the Penal Code (Act No. 140 of 29 November 1961, as amended by Acts No. 120 of 19 December 1962, No. 53 of 9 July 1963, No. 56 of 17 June 1965, No. 81 of 25 October 1966, No. 148 of December 1969, No. 45 of 25 April 1973 and No. 159 of 13 December 1989.)

"(4) The death penalty may not be imposed on a pregnant woman or person who was not older than eighteen at the time he committed the crime."

Section 78 of the Penal Code

"The court may impose on a juvenile only the penalties of imprisonment and forfeiture of property, with, in addition, if he is gainfully occupied, reformatory measures and a financial penalty."

Section 79 of the Penal Code

"(1) The terms of imprisonment set in the present Code shall be reduced to one half in the case of juvenile offenders, but the maximum term shall in no case exceed five years and the minimum term one year.

(2) In cases where a juvenile commits a crime which may be punished by death under the provisions of the Special Part of the present Code and where the degree of danger arising from such crime to society is exceptionally high in view of the especially contemptible manner in which the crime was committed or of its especially contemptible motive, or its especially grave and hardly correctable consequences, the court may sentence the juvenile offender to a term of five to ten years' imprisonment if it believes that the penalty fixed within the range specified in paragraph 1 would not sufficiently serve the purpose of punishment.

(3) The court may also sentence a juvenile offender to a term of five to ten years' imprisonment if, as a soldier, he committed during a defence emergency or in military action a crime which may be punished by death under the provisions of the Special Part of the present Code, if such crime prevented or substantially endangered military operations or greatly threatened discipline or order in the armed forces or an armed corps, and if the court believes that the penalty fixed within the range specified in paragraph 1 would not sufficiently serve the purpose of punishment."

E. FINLAND

(Original: English)
(7 March 1990)

Finland abolished the death penalty for all offences in all circumstances in 1972 (Act Abolishing the Death Penalty from the Sanctional System No. 343/1972). The death penalty in time of peace was abolished in 1949. There have been no executions in Finland in time of peace since 1826.

F. NEW ZEALAND

(Original: English)
(29 March 1990)

1. Legislation has recently been enacted which completely abolishes capital punishment in New Zealand under both criminal and military law. The Abolition of the Death Penalty Act 1989 removes the death penalty as the mandatory sentence for treason under the Crimes Act 1961, and substitutes a sentence of life imprisonment. Similarly, the death penalty is removed as a sanction for offences under the Armed Forces Discipline Act 1971.

2. It should be noted that no one has ever been convicted of treason under the Crimes Act 1961, nor was anyone ever sentenced to death under the Armed Forces Discipline Act 1971.

3. As a result of the passage of the Abolition of the Death Penalty Act 1989, New Zealand was in a position to sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights on 22 February 1990.

G. PANAMA

(Original: Spanish)
(2 April 1990)

1. The Government of the Republic of Panama wishes to state that the death penalty, also known as capital punishment, has been constitutionally removed from Panamanian public law since 1918. Article 10 of the 1918 Act reforming the 1904 Constitution stated: "There shall be no death penalty in Panama"; since then, this provision has been invariable, and has been firmly upheld in the Constitutions of 1941, 1946 and 1972.

2. The abolition of the death penalty is an axiom of humanitarian penal law and the subject of a growing movement among world opinion, to which the Panamanian Government has belonged since 1918.

H. PAPUA NEW GUINEA

(Original: English)
(27 March 1990)

1. With regard to paragraph 1 of resolution 1989/32, it is to be noted that, although under the Papua New Guinea Criminal Code only three different offences carry the death penalty, such penalties have never been invoked because of the non-occurrence of these offences. These offences consist of the following: (1) piracy; (2) attempted piracy with personal violence; (3) treason. At the present time the death penalty for these offences would have "universal application", i.e. the penalty applies to all persons except those who are under seven years of age, who, under Papua New Guinea law, cannot be held criminally responsible for an act or omission because of their immaturity.

2. In relation to paragraph 2 of the resolution, the Papua New Guinea Government has yet to consider the possibility of enacting legislation specifically prohibiting the application of the death penalty to persons under 18 years of age.

I. SINGAPORE

(Original: English)
(2 April 1990)

Under section 213 of the Singapore Criminal Procedure Code, the death sentence "shall not be pronounced on or recorded against a person convicted of an offence if it appears to the court that at the time when the offence was committed he was under the age of 18 years, but instead of that, the court shall sentence him to be detained during the President's pleasure, and if so sentenced, he shall be liable to be detained in such place and under such conditions as the President directs, and while so detained shall be deemed to be in legal custody".

J. SPAIN

(Original: Spanish)
(21 March 1990)

Article 15 of the Spanish Constitution states: "The death penalty shall be abolished, except as provided for by military criminal law in wartime." The death penalty is thus not applicable to any person in Spain, irrespective of his age.

K. SWEDEN

(Original: English)
(5 April 1990)

1. The right to life is protected by the Swedish Constitution, which contains a total prohibition on capital punishment with regard to anyone, including in time of war.
2. Sweden has ratified the Sixth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty.
3. The Swedish Government submitted to Parliament on 15 February 1990 a bill on the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, which was adopted by the General Assembly of the United Nations on 15 December 1989. The Government expects that the Protocol will be ratified by Sweden this spring.
4. Regarding the question of the application of the death penalty to persons under 18 years of age, the Swedish Government welcomes the unanimous reaffirmation by the General Assembly to the United Nations, by the adoption on 20 November 1989 of the Convention on the Rights of the Child, of the

prohibition on the imposition of capital punishment for offences committed by persons below 18 years of age. Such prohibition is already contained inter alia in the International Covenant on Civil and Political Rights.

5. The Swedish Government fully supports the urgent appeal made by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 1989/32 to all those member States that at present apply the death penalty to persons under the age of 18 to take the necessary measures to stop this practice.

L. TUNISIA

(Original: French)
(5 April 1990)

1. Tunisian penal legislation on capital punishment prohibits the application of the death penalty to minors.

2. Besides, the legal safeguards inherent in the right to defence and respect for the right to life, Tunisian penal legislation specifies that when the sentence incurred is the death penalty, it shall be replaced for offenders who have passed their 13th birthday but are less than 18 years old by 10 years imprisonment (Penal Code, art. 43, new para. 2).

3. In addition, article 36 of the Penal Code provides that an offence shall not be punishable if the accused was under 13 years of age at the time when it was committed.

II. INFORMATION RECEIVED FROM INTERGOVERNMENTAL ORGANIZATIONS

EUROPEAN PARLIAMENT

(Original: French)

(20 December 1989)

After a debate conducted under the emergency procedure provided for in article 64 of its rules of procedure, the European Parliament adopted the following resolution on the execution of minors (extract from the records of the meeting of 12 October 1989, containing the resolution of the Parliament (1989-1990 session)):

RESOLUTION */

on the execution of minors

The European Parliament.

- A. Considering that it unreservedly opposes the death penalty,
- B. Welcoming all measures tending towards the abolition of the death penalty,
- C. Deeply concerned at the fact that the Supreme Court of the United States has decided by 5 votes to 4 not to rule unconstitutional the execution of offenders aged 16 and 17 and mentally retarded persons,
- D. Considering that 27 convicted juveniles currently face the threat of execution, including H.A. Wilkins of Missouri and K. Stanford of Kentucky, whose deaths may occur within the next few hours or days,
- E. Recalling that, a year ago the same Court rescinded by 5 votes to 3 the death sentence passed on a 15-year-old youth,
- F. Considering also that the Eighth Amendment to the Constitution of the United States protects American nationals against cruel and unusual punishment,
- G. Believing that the death penalty is a totally unsuitable punishment for persons who have not reached full physical or mental maturity,

*/ Unofficial translation by United Nations Secretariat.

- H. Supporting the Amnesty International world campaign against the death penalty,
1. Invites the President and Congress of the United States of America to take all necessary steps for the complete abolition of the death penalty, first by not carrying out the executions planned and then by commuting all death sentences;
 2. Instructs its President to transmit this resolution to the Council, the Commission, the Secretary-General of the United Nations, the President of the United States and the Chairmen of the United States Senate and House.

Enrico VINCI
Secretary-General

David MARTIN
Vice-President

III. INFORMATION RECEIVED FROM THE INTERNATIONAL COMMITTEE
OF THE RED CROSS

(Original: French)
(9 March 1990)

1. In its resolution, the Sub-Commission on Prevention of Discrimination and Protection of Minorities points out that international humanitarian law prohibits the application of the death penalty to persons under the age of 18. Article 68 (4) of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, prohibits the imposition of the death penalty in an international armed conflict on a protected person in occupied territory for an offence committed when he was under 18 years of age. Article 77 (5) of the first Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts provides, much more broadly, that the death penalty for an offence related to an international conflict shall not be executed on persons, whatever their nationality, who had not attained the age of 18 years at the time the offence was committed. As regards non-international armed conflicts, article 6 (4) of the second Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts prohibits the pronouncing of the death penalty on persons under the age of 18 years at the time of the offence.

2. To our knowledge, there have not recently been any violations of these rules in their specific field of application, i.e. armed conflicts. The same cannot unfortunately be said of the prohibition of summary or arbitrary executions, a prohibition which is still all too frequently violated, even in the case of persons aged under 18.

IV. INFORMATION RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

A. GENERAL ARAB WOMEN FEDERATION

(Original: English)
(8 April 1990)

1. A special law in Iraq deals with the question of crimes committed by minors. This legislation, the law of Minors' Care Act No. 76 of 1983, represents an advanced law that deals with this issue from a comprehensive and humanitarian point of view. It is based on scientific grounds and on modern theories that provide a complete framework to minors' delinquency. It begins with the prevention of delinquency and ends with future care of delinquents. It stipulates that minors' crimes should be seen in special courts by specialized judges.
2. The Minors' Care Act takes into consideration the particularity of minors' delinquency. Punishment is called measures. These measures vary according to the age of the minor. For example, a minor under 15 years of age is considered as a boy. The strongest measure against a boy is to put him in the school of rehabilitation of boys for five years for a crime whose normal punishment is either the death penalty or life imprisonment as stipulated in article 76 of this law.
3. A minor over 15 years of age and under 18 years is considered as an adolescent. The strongest measure against an adolescent is to put him in the school of rehabilitation of adolescents for a period of no less than 5 years and no more than 15 years for a crime whose punishment is either the death penalty or life imprisonment as stipulated in article 77 of this law.
4. Hence we see that the Iraqi law does not apply the death penalty to persons under 18 years of age. In addition, Iraqi laws do not apply the death penalty to persons over 18 years but under 25 years at the time the crime is committed. Life imprisonment would replace the death penalty in that case in accordance with article 79 of Act No. 111 of 1969.
5. As to other Arab countries, some have a special law regarding minors' delinquency, such as Kuwait, Bahrain, the United Arab Emirates, Egypt, Jordan, Lebanon, Sudan, Tunisia and Morocco. The other countries have special texts within their laws concerning minors' delinquency, such as Somalia, Mauritania and Djibouti.
6. All the Arab countries, whether they have special law for minor crimes or not, do not apply the death penalty to persons under 18 years of age.

B. COMMISSION OF THE CHURCHES ON INTERNATIONAL AFFAIRS

(Original: ENGLISH)
(4 April 1990)

1. During the Moscow Central Committee meeting, the Committee on Unit II discussed the issue of the death penalty. Expressing concern for the increasing use of the death penalty in many parts of the world, the Committee noted that the World Council of Churches (WCC) has no explicitly stated policy rejecting the death penalty. In 1971 the Central Committee recommended to

member churches to "promote efforts towards the abolition of capital punishment as a significant expression of our belief in the sanctity of life". Since then WCC has adopted resolutions and taken actions based on an implicit rejection of the death penalty. Many member churches of WCC have already adopted unequivocal positions against the death penalty.

2. The Central Committee in Moscow adopted the Unit II Committee recommendation that "the CCIA, in collaboration with other sub-units, be charged with further moral, theological and legal examination of the death penalty", and asked for a report on this issue for March 1990.

The following provides background on the issue of the death penalty for the proposed Central Committee action.

1. General Information

3. Many churches, organizations and individuals have intensified their efforts over the last few years to gain the international abolition of the death penalty. They do so on the grounds that the death penalty violates the fundamental human right to life and to be free from torture or cruel, inhuman or degrading treatment or punishment.

4. Those Governments that impose the death penalty do not so much deny its cruelty as attempt to justify its use as necessary. In some countries the death penalty is considered a legitimate means of preventing or punishing murder. Elsewhere, it is used to combat drug trafficking, political violence, economic corruption or adultery. The death penalty is used in certain countries as an instrument of political repression against members of the opposition.

5. Countless men and women have been executed on the assumption that their deaths will deter others from crime. Yet this has never been proven. In fact, the most recent study on the death penalty, conducted by the United Nations in 1988, concluded that research has failed to establish that executions have a greater deterrent effect than life imprisonment. The experience of countries which have abolished the death penalty has shown that dangerous offenders can be kept safely away from the public without resorting to execution.

6. When the argument of deterrence falls away, one is left with a more deep-seated justification of the death penalty: that of just retribution for the particular crime committed. This, however, is often no more than a desire for vengeance masked as a principle of justice.

7. One of the most compelling reasons for abolishing the death penalty is the risk of executing innocent persons. Over the past decade, prisoners have been executed despite strong doubts about their guilt. Others have been freed after a re-examination of their cases showed that they had been wrongly convicted. In political cases the death penalty is often applied after summary trials or other unfair proceedings. Cases have been heard in secret, without adequate legal representation, before judges who are not always competent or independent.

8. Other arguments against the death penalty are that it is arbitrary, unjust and irrevocable. The reality of the death penalty is that what determines who shall be executed and who shall be spared is often not only the nature of the crime but also the ethnic and social background, the financial means or the political opinions of the defendant. In country after country the death penalty is used disproportionately against the most vulnerable members of society, the poorest and the least able to defend themselves. In South Africa, for example, death sentences are imposed disproportionately on the black population by an almost entirely white judiciary.

9. The death penalty is irreversible. The decision to execute results in something which cannot be remedied or undone. Given the irreversibility of the death penalty, the possibility of judicial error or discrimination, which all criminal justice systems are vulnerable to, assumes even greater importance.

10. Since the Second World War there has been a move towards the abolition of the death penalty. Many Governments have recognized that the death penalty cannot be reconciled with human rights, and during the past decade at least one country a year, on average, has abolished the death penalty for ordinary crimes or for all crimes. Today, some 80 countries have abolished the death penalty in law or in practice. The United Nations has declared itself in favour of abolition. A draft Second Optional Protocol aimed at the abolition of the death penalty was accepted by the General Assembly of the United Nations in 1989.

2. Theological and moral considerations

11. Many member churches of WCC have studied carefully the issue of the death penalty, reflecting both on the sacredness of life and on the theological and moral problems inherent in the application of an irreversible form of punishment by human and thus imperfect criminal justice systems. Since the Vancouver assembly there has been increasing reflection within WCC on the issue of the integrity of creation and dignity of all life created by God.

12. The Bible affirms that human beings are created in God's image and are of infinite worth. It can therefore be asserted that the taking of human life by human beings or the States they have organized is to usurp the role of God. Contrary to the concept of Christian love, the institutionalized taking of human life prevents the possibility of the redemption and reconciliation of the offender.

13. However, throughout the history of the Christian Church, and with the notable exception of the historic peace churches and some Roman Catholic orders, the death penalty has often been justified, condoned and even applied.

3. Legal Considerations

(a) International law

14. International human rights standards stipulate as non-derogable rights that everyone has the right to life, liberty and security of person and that no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. However, while summary and arbitrary executions are clearly flagrant violations of internationally recognized human rights, there

is no absolute world-wide prohibition to the use of the death penalty. For example, the Universal Declaration of Human Rights does not address the interrelationship between the "right-to-life" guarantee and the appropriateness of the death penalty as a form of state-imposed punishment. Existing human rights standards do, however, have a clear bias against the death penalty and significantly restrict its application.

15. The International Covenant on Civil and Political Rights contains provisions which restrict the use of the death penalty and refer generally to abolition in terms which strongly suggest that abolition is desirable. Together with other international instruments there is a clear preference in international law for the abolition of the death penalty and the requirement that where it continues to exist, it should be limited to very exceptional cases.

(b) Administration of justice

16. Because the taking of life is irreversible, the death penalty must be regarded as qualitatively different from all other forms of punishment.

17. In terms of criminal justice systems, there is no logic in the use of the death penalty in that there is convincing evidence that the use of the death penalty does not have a special deterrent effect. Furthermore, all criminal justice systems are vulnerable to discrimination and error. Human factors such as expediency, the exercise of discretion and the influence of public opinion can affect each stage of legal proceedings from indictment through trial and sentencing to punishment and the possible granting of clemency.

18. The use of the death penalty is a justice issue: historically it is a punishment which in many cases is used unequally and unjustly upon the poor, minorities and on oppressed groups within the population. As good legal representation frequently is one of the most important elements in determining the outcome of a trial, unawareness of this or lack of economic means in obtaining it may seriously affect the administration of justice where factors such as race, class and poverty play a predominant role.

19. In the case of political crimes, the death penalty may be imposed under such circumstances that virtually any political activity inconsistent with government policy becomes a capital offence.

20. These legal problems become even more pressing in the light of the above theological and moral considerations.

4. Previous WCC actions

21. WCC has taken many actions in the last years on behalf of condemned South Africans, wherein the general secretary has pleaded for clemency and the abolition of the death penalty in South Africa on the grounds that "the death penalty is not in keeping with Christian convictions and the accepted norms of civilized society" [Castro, Sept. 1989] and on the basis of "the conviction that all human life is sacred, and that the imposition of the death penalty is an affront to God and man" [Potter, Aug. 1978]. Using similar argumentation, general secretaries have pleaded for the lives of condemned prisoners in, for example, Pakistan, Ethiopia, Malawi, Guatemala and Jamaica.

In 1971 the WCC Central Committee urged the member churches to promote efforts towards the abolition of capital punishment as a significant expression of our belief in the sanctity of life. The continued use of capital punishment by many nations must be met with a concerted effort towards its elimination.

5. Statement on the death penalty

(adopted by the Central Committee of the World Council of Churches on
30 March 1990)

Concerned about the increasing use of the death penalty in many parts of the world,

Recognizing that all human beings are created in God's image and are of infinite worth, and that the taking of human life by the State is to usurp the will of God,

Recognizing that the institutionalized taking of human life prevents the possibility of the redemption and reconciliation of the offender and is thereby contrary to the concept of Christian love as revealed in the New Testament,

Recognizing that the death penalty is irreversible and therefore qualitatively different in nature from all other forms of punishment,

Recalling that international human rights standards stipulate as non-derogable rights that everyone has the "right to life, liberty and security of person" and that no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment,

Concerned that the death penalty is a punishment which is often used unequally and unjustly upon the poor, minorities, on oppressed groups within societies, or against political opponents of those in power,

Recalling that the World Council of Churches has on many occasions pleaded for the lives of persons condemned to death by States,

Confessing that Christian churches have in the past often condoned and provided biblical-theological justification for the application of the death penalty and in some cases continue to do so today, and

Reaffirming the 1971 Central Committee recommendation to "promote efforts towards the abolition of capital punishment as a significant expression of our belief in the sanctity of life",

The Central Committee of the World Council of Churches meeting in Geneva (Switzerland) in March 1990,

1. Declares its unconditional opposition to the death penalty and calls upon all States to abolish it;

2. Urges Governments to move swiftly towards the signing and ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty;
3. Calls upon the member churches, wherever possible in co-operation with people of other faiths and non-governmental organizations:
 - (a) to advocate the abolition of the death penalty in those States where it is still permitted;
 - (b) to oppose efforts to restore the death penalty in States where it is currently forbidden;
 - (c) to support international efforts for the universal abolition of the death penalty;
 - (d) to develop theological and biblical resources to aid their own members and others in their efforts for abolition, and question the biblical and theological rationale offered by many proponents of the death penalty; and
 - (e) to encourage and support one another in these efforts by the sharing of insights, resources and solidarity.

C. INTERNATIONAL CHRISTIAN YOUTH EXCHANGE

(Original: English)
(28 February 1990)

The organization expressed its support in taking actions against the application of the death penalty to persons under 18 years of age, as it is also against the application of the death penalty to persons above the age of 18.

D. INTERNATIONAL COMMISSION OF JURISTS

(Original: English)
(12 April 1990)

1. The International Commission of Jurists, referring to the decision of the Supreme Court of the United States of America in Stanford v Kentucky which held that the United States Constitution does not prohibit the execution of juvenile offenders, finds this result unfortunate and at odds with the prohibition against executions of minors found in the International Covenant on Civil and Political Rights (Article 6 (5)), the American Convention on Human Rights (Article 4 (5)) and the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty adopted in Economic and Social Council resolution 1984/50 and endorsed in General Assembly resolution A/Res/39/51.

2. The International Commission of Jurists thinks that legislation prohibiting the death penalty for persons under 18 must relate to the offender's age at the time of the offence, a distinction not made in the Sub-Commission's resolution. That is to say, no one should be liable to the

death penalty for an offence committed while under the age of 18. This is the tenor of all the instruments cited above. There would be, on the other hand, something macabre about exonerating such an offender until he reaches 18 and then executing him or her. The basis of this 18-years limit is the assumption that a person under 18 years of age has not reached a sufficient stage of maturity to realize the gravity of his or her offence. Consequently it would be quite wrong to execute the offender after he or she has reached an age of greater maturity.

E. INTERNATIONAL INSTITUTE OF HUMANITARIAN LAW

(Original: English)

(9 April 1990)

1. The main purpose of the International Institute of Humanitarian Law is to promote the dissemination and development of international humanitarian law and to work for its implementation. Therefore our Institute is engaged in supporting the main principles on which this law is based. The need to ensure humanitarian treatment in all circumstances is permanently felt because there is much violence and use of force in the world, and not enough humanity. This necessity to ensure human treatment is in particular required on behalf of categories of persons which are entitled to the special protection of society, such as young people under 18.

2. As indicated in the resolution of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Geneva Conventions of 1949 and their Additional Protocols of 1977 have already set up the principle that death penalty should not be carried out, or shall not be pronounced, against persons under 18 years of age. It is important to underline that this principle is proclaimed not only for international armed conflicts, but also for non-international armed conflicts covered by Protocol II of 1977.

3. There are, however, situations of non-international armed conflicts which are not covered by Protocol II of 1977, to which this humanitarian standard should be also extended, as in these situations the death penalty is often applied on a large scale. There are, besides this, mixed situations, which are neither war nor peace. It is good that this prohibition of the death penalty for minors has also been proclaimed for peacetime situations as a standard, in the Covenant on Civil and Political Rights, and that no derogation may be made in relation to this principle, even in case of public emergency. In this way the principle, motivated by humanitarian considerations, has been firmly established in international law and what remains to be done is to work for the respect of this principle in all circumstances and by the authorities. The Institute, in its efforts to disseminate humanitarian law, has been and will continue to act to contribute to wide dissemination of the principles of this law.

4. In this context, efforts should be made to obtain wider access to both the Covenant on Civil and Political Rights and the Additional Protocols to the Geneva Conventions, adopted in 1977, because the present state of ratifications and accessions is not satisfactory. An analysis of these rules may lead to the conclusion that additional rules for the implementation of the above principle are necessary, in which case action towards the development of humanitarian law would be necessary.

5. The Institute supports the action initiated by resolution 1989/32 of the Sub-Commission, and considers that the action should be continued and intensified in order to ensure the respect of the principles laid down in that resolution.

F. INTERNATIONAL UNION OF POLICE FEDERATIONS

(Original: English)
(9 April 1990)

1. The International Union of Police Federations, representing 18 police unions and federations with over 500,000 members, is definitely in favour of this resolution. It is of the opinion that the death penalty for persons under 18 years of age is in contradiction with human rights.

2. At the same time, the organization has to point out that police officers are frequently the victims when even very young persons lay bomb traps or otherwise cause the death of police officers. The observation of human rights should therefore include the safety of police officers. It should be well understood that human rights apply to police officers as well.

G. WORLD MOVEMENT OF MOTHERS

(Original: English)
(9 March 1990)

1. The International Council of the organization deliberated on this question and pronounced itself unanimously against such penalties.

2. Moreover, the World Movement of Mothers warned that certain countries attempt to circumvent their own laws; they arrest children under 18, condemn them to prison terms long enough for them to reach age 18, and then execute them. This particularly odious practice should be strenuously guarded against.

Notes

1/ The term "member of the armed forces" covers the following:

1. Officers on the active list - art. 1 of the Code of Military Penal Procedure;
2. Reserve officers while present in the armed forces - art. 1 of the same Code;
3. Officials having the status of officers in accordance with a Royal decree - art. 1 of the same Code;
4. Militiamen when on active service - art. 1 of the same Code; volunteers (career volunteers, volunteers for wartime, army workers, etc.) art. 1 of the same Code;
5. Members of the armed forces on limited leave of absence - art. 2 of the same Code;

6. Members of the armed forces on unlimited leave of absence, throughout the day on which they are required to perform military service (art. 7 of the same Code) and throughout the day on which they leave or resume service (art. 8 of the Code);
7. Members of the Gendarmerie Corps - art. 25 of the Code.

2/ Persons who are no longer on active service but continue to have military obligations: for example, a militiaman who has completed his term of active service; a militiaman who has joined the army pursuant to military law but has been sent home to await call-up for active service; a reserve officer who is no longer in the armed forces, etc.



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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-second session
Item 10 (a) of the provisional agenda

ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF
DETENTION AND IMPRISONMENT

Report of the Secretary-General on the application of the death
penalty to persons under 18 years of age prepared pursuant to
Sub-Commission resolution 1989/32

Addendum

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I. INFORMATION RECEIVED FROM GOVERNMENTS

A. AUSTRALIA

[Original: English]
[15 May 1990]

1. All States and Territories of Australia have abolished the death penalty for all offenders. This applies to all criminal and military offences.
2. Australia opposes the death penalty in all cases, and has strongly supported the Second Option Protocol to the International Covenant on Civil and Political Rights, which urges member States to take action to abolish the death penalty. Although Australia is not yet a signatory to the Protocol, its laws are in accord with it.

B. BAHRAIN

[Original: Arabic]
[19 June 1990]

The Permanent Representative has the honour to inform you that, in accordance with the provisions of articles 68, 70 and 71 of the Penal Code promulgated by Legislative Decree No. 15 of 1976, the criminal courts in the State of Bahrain refrain from passing sentence of death on any accused person under 18 years of age, regardless of the offence with which he is charged. Moreover, the Juveniles Act promulgated by Legislative Decree No. 17 of 1976 prohibits the institution of criminal proceedings against an accused person who, being under 15 years of age, is regarded as a juvenile and, as such, can be subjected only to rehabilitative measures.

C. BAHAMAS

[Original: English]
[9 April 1990]

1. The children and Young Person (Administration of Justice) Act, chapter 90 of the laws of the Bahamas, prohibits the imposition of the death penalty upon any person who at the time of commission of the homicide was under the age of 18. Accordingly, the laws of the Bahamas are in keeping with the resolution.
2. The existing legislation in the Bahamas thus prohibits the application of the death penalty to persons under 18 years of age. The prohibition is contained in the Penal Code (chapter 77) Section 312, which states, inter alia:

"Whoever commits murder shall be liable to suffer death ... provided that sentence of death shall be pronounced on or record against a person who, in the opinion of the court, was at the time when the murder was committed under eighteen years of age; but in lieu of such punishment, the court shall sentence such person to be detained during Her Majesty's pleasure".

D. BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

[Original: Russian]
[20 April 1990]

In accordance with the legislation in force in the Byelorussian SSR (article 22 of the Criminal Code of the Byelorussian SSR), persons who have not attained the age of 18 when they commit a crime cannot be sentenced to death.

E. CANADA

[Original: English]
[20 April 1990]

1. The last execution in Canada took place in 1962. Capital punishment was formally abolished as a penalty for Criminal Code offences in July 1976. However, capital punishment continues to be in force under the National Defence Act for a wide variety of offences, although a sentence of death has not been imposed by a Canadian court martial since 1944 and is not likely to be so in the foreseeable future.

2. The National Defence Act does not preclude the imposition of a sentence of death on persons under 18 years of age. However, such a penalty could be challenged under the Canadian Charter of Rights and Freedoms (incorporated in the Canadian Constitution on 17 April 1982) as being contrary to "the right not to be subjected to any cruel and unusual treatment or punishment" (s.12) and the right not be deprived of life, liberty and security of the person except in accordance with the principles of fundamental justice (s.7).

3. In summation, as indicated above, the death penalty is not, for all practical purposes, in use in Canada.

F. CUBA

[Original: Spanish]
[21 May 1990]

1. Cuba has given particular attention to protecting juveniles who have behavioural problems in general and it has established standards to regulate their education and training, for example, Decree-law No. 95 which set up the National Commission for Prevention and Social Care, one of whose primary functions is to prevent juvenile delinquency.

2. On this particular issue, the Penal Code of April 1988 (Act No. 62), article 20.1, stipulates as follows:

"The death penalty is an exceptional measure, and shall be applied by the courts only in the most serious cases of the commission of those offences to which it applies".

3. Article 29.2 stipulates:

"The death penalty may not be applied to persons under 20 years of age or to women who were pregnant at the time of the commission of the offence or at the time when the sentence is pronounced".

4. Further, in Cuba centres for juveniles provide a system of assessment and special educational treatment to allow their reinsertion into society.

G. ECUADOR

[Original: Spanish]
[15 May 1990]

Acting in accordance with its position of principle and its legal tradition of opposition to the application of the death penalty, Ecuador completely abolished capital punishment in its 1897 Constitution, and maintained the relevant provision in subsequent Constitutions, including the current 1987 Constitution, the relevant section of which stipulates as follows:

"Article 19. Without prejudice to other rights necessary for the full moral and material development deriving from the nature of the individual, the State guarantees:

1. Inviolability of life and personal integrity. There is no death penalty. Torture and any other inhuman or degrading treatment are forbidden".

H. ITALY

[Original: French]
[2 May 1990]

1. The death penalty has been abolished under Italian law. It remains in force only as an exceptional penalty as part of the special provisions in time of war. Article 27 of the Italian Constitution stipulates as follows:

"The death penalty is permitted only in cases provided for by military laws of war".

2. By signing the Convention on the Rights of the Child in January 1990, Italy made an international commitment to remove life imprisonment and a fortiori capital punishment from those penalties that may be applied to persons aged under 18.

I. JORDAN

[Original: Arabic]
[26 March 1990]

1. The courts in the Hashemite Kingdom of Jordan do not apply the death penalty to persons under 18 years of age, in view of the special provisions of the Prosecution of Juveniles Act No. 24 of 1968, article 2 of which defines a "juvenile" as a male or female person over 17 but under 18 years of age.

2. Article 18, paragraph 2, of the same Act stipulates that: "No juvenile shall be sentenced to death or hard labour". The maximum penalty that can be imposed on a juvenile guilty of a crime punishable by death is 6 to 12 years' imprisonment. Consequently, under the legislation in force in the Hashemite Kingdom of Jordan, the death penalty is not applied to juveniles.

J. MADAGASCAR

[Original: French]
[28 May 1990]

1. Pursuant to Order No. 62-038, article 38, dated 19 September 1962 abrogating and replacing Order No. 60-142 on the protection of children "the Criminal Court for Minors shall try all crimes committed by minors under 18".
2. In addition, article 46, paragraph 2 of the same Order stipulates that "In no case shall a person under 18 years of age be sentenced to death".

K. MALAWI

[Original: English]
[3 May 1990]

The relevant Malawi legislation is as follows:

"Sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the court that at the time when the offence was committed he was under the age of 18 years, but in lieu thereof the court shall sentence him to be detained during the President's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the President may direct, and whilst so detained shall be deemed to be in legal custody.

When a person has been sentenced to be detained during the President's pleasure under the last preceding subsection, the presiding judge shall forward to the President a copy of the notes of evidence taken on the trial, with a report in writing signed by him containing any recommendation or observations on the case he may think fit to make."

L. MALAYSIA

[Original: English]
[22 June 1990]

1. The list of offences which carry the death penalty is as follows:
 - (i) Section 302 of the Penal Code - murder.
 - (ii) Section 364 of the Penal Code - kidnapping or abduction in order to murder.

- (iii) Section 39B of the Dangerous Drugs Act 1952 - trafficking in dangerous drugs.
- (iv) Section 57 of the Internal Security Act 1960 - offences relating to firearms, ammunition and explosives.
- (v) Section 58 of the Internal Security Act 1960 - consorting with person carrying or having possession of arms or explosives.
- (vi) Section 59 of the Internal Security Act 1960 - supply of arms for the use of terrorist.
- (vii) Section 3 of the Firearms (Increased) Penalties Act 1971 - discharging a firearm in the commission of a scheduled offence.
- (viii) Section 3A of the Firearms (Increased) Penalties Act 1971 - accomplices in case of discharge of firearm.
- (ix) Section 7 of the Firearms (Increased) Penalties Act 1971 - trafficking in firearms.
- (x) Section 3 of the Kidnapping Act 1961.

2. Juvenile offenders (less than 18 years of age) found guilty of offences punishable by death would not have the death sentence imposed because of section 16 of the Juvenile Courts Act 1947, which states:

"Sentence of death shall not be pronounced or recorded against a person convicted of an offence if it appears to the Court that at the time when the offence was committed, he was a juvenile ...".

3. However, section 16 will not avail a juvenile who is charged with a security offence. "Security offence" means an offence against sections 57, 58, 59, 60, 61 or 62 of the Internal Security Act, 1960 or any offence against any other written law the commission of which is certified by the Attorney-General to affect the security of the Federation. Regulation 3(3) of the Essential (Security Cases) (Amendment) Regulation 1975 (ESCAR) expressly excludes the application of the Juvenile Courts Act 1947 where the juvenile is accused of or charged with a security offence.

M. MOROCCO

[Original: French]
[18 June 1990]

1. First, Moroccan legislation provides for the death penalty to punish certain extremely serious crimes specified in the Penal Code.
2. On account of its serious nature, the death penalty is preceded by two mandatory stages, one of them is judicial and the other pertaining to the royal prerogative.
3. In the judicial stage, any death sentences are subject to ratification by the Supreme Court, while as far as the royal prerogative is concerned, no death sentence may be carried out without an appeal for a pardon being filed.

4. The Commission on Pardons, which is attached to the Ministry of Justice, issues a recommendation on all appeals for a pardon and the age of convicted persons is taken into consideration when cases are examined.

5. Furthermore, no decision may be taken prior to the royal decision. In addition, death sentences are more often than not commuted to life imprisonment on humanitarian grounds.

N. NETHERLANDS

[Original: English]
[20 March 1990]

1. In the Netherlands the imposition of capital punishment was abolished categorically under article 114 of the Netherlands Constitution of 1983.

2. The Kingdom of the Netherlands approved the sixth Protocol to the European Convention on Human Rights (on the abolition of the death penalty) by means of the Kingdom Act of 5 February 1986.

3. The Netherlands was also a staunch supporter of the adoption of the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty. It will ratify the Second Optional Protocol as soon as possible.

4. In the light of this information it goes without saying that in the Netherlands there is no separate legislation on the application of the death penalty to persons under 18 years of age.

O. PAPUA NEW GUINEA

[Original: English]
[26 March 1990]

1. The Government of Papua New Guinea fully endorses resolution 1989/32 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

2. With regard to paragraph 1 of the said resolution, it is to be noted that although under the Papua New Guinea Criminal Code only three different offences carry the death penalty, such penalties have never been invoked because of the non-occurrence of these offences. These offences consist of the following: (1) piracy, (2) attempted piracy with personal violence and (3) treason. At the present time the death penalty for these offences would have "universal application", i.e. the penalty would apply to all persons except those under seven years of age, who, under Papua New Guinea law, cannot be held criminally responsible for an act or omission because of their immaturity.

3. In relation to paragraph 2 of the resolution, the Papua New Guinea Government has yet to consider the possibility of enacting legislation specifically prohibiting the application of the death penalty to persons under 18 years of age.

P. QATAR

[Original: Arabic]
[15 March 1990]

1. The State of Qatar has considerably restricted the application of the death penalty, which is confined to the following most serious crimes listed in the Penal Code of Qatar:

(a) Article 20 of the Penal Code stipulates that the death penalty shall be imposed for murder and crimes against the State;

(b) Article 63 of the Code stipulates that any person who intentionally brings about the death of, or causes serious injury to, the Ruler, his Deputy, or the Crown Prince, shall incur the death penalty;

(c) Article 65 of the Code stipulates that any person who bears arms or attempts to bear arms against the State of Qatar, or incites others to take such action, shall incur the death penalty;

(d) Article 66 of the Code stipulates that the death penalty shall be imposed on any person who in any way joins the armed forces of a State at war with Qatar, who colludes or conspires with a foreign State or with any person acting in its interests with a view to carrying out acts of aggression against Qatar, or who colludes or conspires with a hostile foreign State or with any person acting in its interests with a view to furthering its military operations or impairing those of the State of Qatar.

2. Article 35 of the Code stipulates that the death penalty shall not be imposed on persons whom the court finds to be under 18 years of age. Article 36 of the Code stipulates that, if it is established that a woman sentenced to death is pregnant, her sentence shall be commuted to life imprisonment. Article 37 of the Code stipulates that the death sentence must not be carried out until it has been ratified by the Ruler.

3. The criminal courts cannot pass sentence of death before the completion of legal procedures in which the accused enjoys every safeguard for his defence. Moreover, every convicted person is entitled to avail himself of the legally defined procedure for appeal to higher judicial bodies and to seek pardon from the supreme political authority, represented by H.H. the Amir of the State of Qatar, who is the constitutional guarantor of the independence of the judiciary. The death sentence is not carried out until the Amir has taken his decision concerning a pardon for the convicted person. At all events, the State of Qatar does not permit the application of the death penalty to persons whom the court finds to be under 18 years of age.

4. The legislation of Qatar is based primarily on the Islamic Shari'a, which is the principal source of law in the State of Qatar. The Islamic Shari'a admits the death penalty in cases in which persons guilty of murder and crimes against the State deserve to be eradicated from society. However, the Islamic Shari'a does not admit or permit the application of the death penalty to persons under 18 years of age under any circumstances whatsoever.

Q. SRI LANKA

[Original: English]
[15 May 1990]

Section 53 of the Penal Code of Sri Lanka provides that:

"53. Sentence of death shall not be pronounced on or recorded against any person who, in the opinion of the court, is under the age of 18 years; but, in lieu of that punishment, the court shall sentence such person to be detained during the President's pleasure".

R. TURKEY

[Original: English]
[2 May 1990]

1. The death penalty exists in Turkish legislation as a punishment for the most serious crimes, such as premeditated homicide and crimes aimed at the existence of the State.
2. A draft law introduced by the Government proposes to amend different provisions of the Turkish Penal Code concerning capital punishment. According to the proposed amendments, the death penalty is to be removed from the legislation for 13 offences.
3. At present the application of death sentences decided by the courts is subject to confirmation by the Court of Appeals and ratification by the Grand National Assembly of Turkey and has to be promulgated by the President of the Republic. Since 1984 the Turkish Parliament has not ratified any death sentence and no execution has taken place in Turkey since that date.
4. According to Turkish legislation, persons under 18 years of age cannot be sentenced to death. The Turkish Penal Code provides for important reductions in the punishment if the offender is under 18 years of age at the time of the commission of an act. In the case of offences subject to the death penalty, imprisonment is to be imposed instead of capital punishment for offenders below the age of 18.

S. UNION OF SOVIET SOCIALIST REPUBLICS

[Original: Russian]
[11 May 1990]

Under article 22 of the Fundamental Principles of the Criminal Legislation of the USSR and Union Republics the death penalty does not apply to minors.

T. UNITED ARAB EMIRATES

[Original: Arabic]
[22 May 1990]

We have the honour to reply that Federal Act No. 9 of 1976, concerning juvenile offenders and vagrants, stipulates as follows:

Article 1: For the purposes of the application of the provisions of this Act, a "juvenile" means a person who was under 18 years of age at the time of the commission of the act with which he is charged, or who was found to be in a state of vagrancy.

Article 9: No juvenile may be sentenced to death, imprisonment or a fine.

The content of the above-mentioned provisions confirms that the domestic legislation of the United Arab Emirates observes the principles advocated by the Sub-Committee on Prevention of Discrimination and Protection of Minorities. In this connection, it should be noted that our domestic legislation was promulgated in accordance with the fundamental human rights set forth in the Provisional Constitution of the United Arab Emirates.

U. UNITED STATES OF AMERICA

[Original: English]
[18 April 1990]

1. In the United States, each of the constituent states has responsibility for the enactment and enforcement of most criminal laws. Capital punishment, including capital punishment for persons committing crimes prior to the age of 18, is largely a State and not a federal matter. Approximately 38 states and the federal Government currently have some provision for capital punishment. State Governments may prescribe appropriate criminal penalties, consistent with the substantive and procedural rights of individuals and the limits on governmental power guaranteed in the United States Constitution. The federal Government may also prescribe appropriate criminal penalties, and is equally subject to the protections and limitations enshrined in the Constitution.
2. Approximately half of all states and the federal Government have capital punishment statutes that may be applied to persons committing crimes prior to age 18. Execution of such offenders is, however, very rare and in modern times has only occurred in cases of involving premeditated murder of extreme cruelty and malice. In the 10 years from 1977 to 1987, 93 persons were executed in the United States for murder. None of these executions was carried out by the federal Government. In that time 3 persons were executed for crimes committed prior to age 18. For the most recent statistics on capital punishment in the United States, the Bulletin on Capital Punishment from the Bureau of Justice Statistics, United States Department of Justice, Washington, D.C. 20531 may be requested.
3. Criminal defendants in the United States have extensive protections under the United States Constitution and the Constitutions of the various states, and ample opportunity to test the validity of their convictions and sentences through numerous avenues of appeal in various state and federal courts, including the United States Supreme Court. The United States Supreme Court has reviewed and circumscribed the imposition of capital punishment under the Fifth Amendment, which states that no person "shall be deprived of life ... without due process of law," and the Eighth Amendment, which prohibits "cruel and unusual punishment," and has affirmed that capital punishment is consistent with these provisions in certain circumstances. In imposing the death penalty, judges and juries must consider carefully the nature and

circumstances of the crime, as well as the character and record of the defendant, weighing both aggravating and mitigating factors, including the youth of the offender.

4. In the case of *Thompson v. Oklahoma*, decided 29 June 1988, the United States Supreme Court overturned a death sentence imposed on a defendant convicted of murder committed at age 15, and implicitly ruled unconstitutional all statutes permitting capital punishment of persons below age 16 at the time of their crime. However, the court did not have a majority of its members behind any single rationale for its decision, and one Justice did not participate. As a result, the *Thompson* case does not preclude the possibility that states could modify their statutes and represent the issue to the supreme court at a later time. In the cases of *Stanford v. Kentucky* and *Wilkins v. Missouri*, decided 26 June 1989, a slim majority of the supreme court concluded that the imposition of the death penalty on persons for crimes committed at ages 17 and 16, respectively, would not amount to "cruel and unusual punishment" in violation of the Eighth Amendment of the United States Constitution.

5. The issue of the death penalty in the United States is subject to a robust national debate and continues to be a matter considered carefully in state legislatures and the United States Congress. The most recent public opinion polls show that a large majority of Americans favour the death penalty for the most serious crimes.

6. The United States notes that general international law does not prohibit the execution of those committing capital crimes prior to age 18, provided that adequate due process guarantees are provided. Although a number of nations do not provide for the execution of such offenders, the practice of those States lacks the uniformity and *opinio juris* necessary to create a norm of customary international law.

7. Treaty law also does not prohibit the United States from instituting capital punishment for offenders below age 18. While the International Covenant on Civil and Political Rights and the American Convention on Human Rights prohibit the imposition of the death penalty for crimes committed by persons prior to age 18, these prohibitions only apply to States that are parties to the treaties. The United States is not a party to either agreement. As a signatory to these agreements, the United States is only obligated to refrain from acts that would defeat their object and purpose. Allowing the execution of individuals for heinous crimes of murder committed when they were under age 18 does not defeat the object and purpose of either agreement, which is generally to foster respect for human rights. The United States is neither a party nor a signatory to the Convention on the Rights of the Child. The United States voted against the General Assembly resolution adopting the draft second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.

8. The United States is a party to the Geneva Conventions of 1949 on the protection of war victims, but not to their additional protocols. The protections of article 68 of the 1949 Geneva Convention relative to the protection of civilian persons in time of war apply only during international armed conflicts and protect only a narrow class of persons - namely protected persons in occupied territory. Article 68 does not apply either to executions

of United States citizens by the United States or to executions during peace-time. Moreover, it is worth noting that article 68 specifically recognizes that nations do and may provide the death penalty for certain offences and permits the execution even of protected persons by hostile Powers for such offences.

9. In 1987, the Inter-American Commission on Human Rights (an organization of American states) found that the United States practice of executing under-18 offenders was contrary to the American Declaration of the Rights and Duties of Man because of variations of practice between the different states of the United States (resolution 3/87, of 27 March 1988). The United States noted its strong disagreement with the Commission's ruling because it conflicted with basic principles of the United States federal structure of government. In 1989, the Commission dismissed a claim brought against the United States which alleged that, contrary to principles of the American Declaration, the imposition of the death penalty in the United States is infected with racial prejudice (resolution 23/89 of 28 September 1989).

V. YUGOSLAVIA

[Original: French]
[23 May 1990]

1. Under Yugoslav criminal legislation minors are entitled to special treatment different from that applied to adult offenders. The treatment takes into account the biological and psychological characteristics of minors and the findings of modern science, and differs both as regards criminal law and criminal procedure.

2. The provisions governing the status of minors under criminal law are contained in the general section of the Criminal code of the Socialist Federal Republic of Yugoslavia and in the Criminal Laws of the socialist republics. The provisions relating to juvenile offenders contained in the general section of the Criminal code of the Socialist Federal Republic of Yugoslavia constitute general rules. They define the general procedure for the application of penalties to offenders in this age group. The criminal laws of the socialist republics specify both the conditions in which penalties may be applied to this category of offender and the length and nature of penalties, the conditions in which they may be suspended, etc.

3. Yugoslav criminal law makes provision for and pronounces the death penalty only as an exceptional measure. Under the provisions of the Constitution of the Socialist Federal Republic of Yugoslavia (art. 175, para. 2) the death penalty only applies to the most serious offences.

4. In view of the purpose and significance of punishment, the Criminal Code of the Socialist Federal Republic of Yugoslavia stipulates that juveniles aged under 14 (children) at the time the crime was committed are not liable to penal sanctions.

5. Juveniles aged between 14 and 16 at the time of the offence may only be sentenced to re-education, disciplinary or supervisory measures and sent to special institutions. Juvenile offenders aged over 16 at the time of the crime but under 18 may be sentenced, in addition to re-education measures, to prison sentences reserved for minors, although only if the offence in question

involved a penalty of over 5 years' imprisonment and if, on account of the grave consequences and high degree of responsibility arising from the offence, a re-education measure would not be appropriate.

6. The criminal laws of the socialist republics stipulate the conditions in which juvenile offenders may be sentenced to security measures, and exclude suspended sentences and cautions.

7. The special treatment of juveniles under criminal law is also reflected in the treatment they receive under criminal procedure. The Code of Criminal Procedure contains special provisions relating to the treatment of juvenile offenders.

8. The procedure adopted in respect of minors stresses the importance of a scrupulous and searching study of the personality of the minor, the need for carrying out that procedure as a matter of urgency and the need to protect the minor from the potentially harmful consequences of criminal proceedings.

9. The specific nature of the special treatment reserved for minors by criminal law is above all underscored by the principle laid down in the Criminal Code of the Socialist Federal Republic of Yugoslavia, article 37, paragraph 3, according to which a person aged under 18 who has committed a crime may not be sentenced to death.

10. The Criminal Code of the Socialist Federal Republic of Yugoslavia contains a further exception regarding the treatment of the perpetrators of crimes depending on their age. The death penalty may not be applied to adults aged under 21 at the time of the crime, unless the crime falls within the category of the most serious crimes against the foundations of the self-managing socialist social order and the security of the Socialist Federal Republic of Yugoslavia, crimes against humanity and international law and crimes against the armed forces.

11. The amendments currently being made to the Constitution of the Socialist Federal Republic of Yugoslavia restrict the death penalty to the most serious crimes committed in wartime or when the threat of war is imminent.

12. Consequently, the Socialist Federal Republic of Yugoslavia should be included among those countries whose legal systems exclude the death penalty in peace-time and envisage the possibility of its application only in wartime or when the threat of war is imminent.

II. INFORMATION RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

International Council for Adult Education

[Original: English]
[21 May 1990]

1. The Council is opposed to the death penalty for persons under 18 years of age or over 18 years of age. It supports the abolition of the death penalty.
 2. Its views are based on moral and political considerations, including its concept of justice. These shall not be detailed here, partly because they are rather well summarized in the article entitled "France: the abolition of capital punishment: The French Experience" by Robert Badinter, which was published in the Crime Prevention and Criminal Justice Newsletter, No. 11, (December 1984), pp. 17 to 19. It might be added that the Council's view of justice probably goes beyond that implied in the article, in that its concept rejects the principle of punishment as a goal of sentencing, and emphasizes the principles of fraternity and the dignity and worth of the human being.
 3. Since 1982, crime prevention and criminal justice have become a field of special interest to the organization, whose present membership includes 92 national, regional and sectoral associations involving 74 countries and 6 regions of the world.
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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM
OF DETENTION AND IMPRISONMENT

Report of the Secretary-General on the application of the
death penalty to persons under 18 years of age, prepared
pursuant to Sub-Commission resolution 1989/32

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INFORMATION RECEIVED FROM GOVERNMENTS

A. AFGHANISTAN

[Original: French]

[11 July 1990]

Under article 93 of the Penal Code of the Republic of Afghanistan, persons under the age of 18 years are not liable to the death penalty.

B. EGYPT

[Original: Arabic]

[17 July 1990]

In Egypt, the death penalty is not applicable to persons under 18 years of age. This is stipulated in article 15 of the Juveniles Act No. 31 of 1974, which reads as follows: "If a juvenile over 15 but under 18 years of age commits an offence punishable by death or imprisonment with hard labour, he shall be sentenced to imprisonment for a term of not less than 10 years. If the penalty is a limited term of hard labour, he shall be sentenced to imprisonment."

C. NICARAGUA

[Original: Spanish]

[30 July 1990]

Under article 23 of the Political Constitution of the Republic, reproduced below, the death penalty does not exist in Nicaragua:

"Article 23:

The right to life is inviolable and inherent in the human person. There is no death penalty in Nicaragua."

In addition, article 28, paragraphs (2) and (3), of the Nicaraguan Penal Code provide that the following shall be exempt from criminal responsibility: "(2) persons under 10 years of age; (3) persons over 10 but under 15 years of age, unless it is established that they have acted with due discernment".

Moreover, article 29, paragraph (2), of the Penal Code lists, as one of the circumstances mitigating criminal responsibility, that in which "(2) the culprit is under 21 years of age, where he is not exempt from criminal responsibility".

Consequently, we consider that Nicaragua is complying with the provisions of the International Covenant on Civil and Political Rights (article 6, paragraph 5), the American Convention on Human Rights (article 4, paragraph 5), the Convention on the Rights of the Child (article 37 (a)) and the 1949 Geneva Conventions on international humanitarian law and the protocols additional thereto.

The Permanent Mission of Nicaragua takes this opportunity to renew to the Secretariat of the United Nations (Centre for Human Rights) the assurances of its highest consideration.



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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-second session
Agenda item 10 (a)

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Report of the Secretary-General

Comments submitted by Governments and specialized agencies pursuant to
General Assembly resolution 44/162 of 15 December 1989, entitled "Human rights
in the administration of justice".

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INTRODUCTION

1. In paragraph 6 of its resolution 44/162 of 15 December 1989, entitled "Human rights in the administration of justice", the General Assembly requested the Commission on Human Rights to invite the Sub-Commission on Prevention of Discrimination and Protection of Minorities to study the practical implementation of United Nations norms and standards in the field of administration of justice and human rights and to recommend practical measures to the Commission.

2. In paragraph 7 of the same resolution, the General Assembly requested the Secretary-General, inter alia, (a) to solicit comments from Member States as well as from the relevant international agencies and bodies, in particular the Human Rights Committee, the Committee against Torture and the Committee for the Elimination of Racial Discrimination, on the implementation of these standards and (b) to forward these comments to the Sub-Commission on Prevention of Discrimination at its next session.

3. As of 2 August 1990, comments were received from the following Member States: Byelorussian SSR, the Netherlands and Tunisia. Comments have also been received from the following specialized agencies: the International Labour Office, United Nations Educational, Scientific and Cultural Organization and the World Health Organization. These comments are reproduced in the present document.

I. GOVERNMENTS

A. Byelorussian SSR

[4 March 1990]

[Original: Russian]

1. As the Byelorussian SSR has already indicated on many occasions to the United Nations Secretariat in reports on human rights and the prevention of crime, the legislation in force in the Republic is consistent with the letter and spirit of the provisions of the Universal Declaration of Human Rights and the other international legal instruments referred to in Commission on Human Rights resolution 1990/81. However, in the context of the current legal reforms and improvements being made to its entire legislation, the Republic is now carefully studying all United Nations norms and standards and proposals for new United Nations legal instruments to ensure that both in its legislation and in the practice of law enforcement the fullest possible account is taken of all the democratic and humane recommendations of the United Nations in this field.

2. In particular, the measures being taken in the Republic aimed at enhancing the role of the judiciary as a whole, strict observance of the democratic principles of court procedure, the institution of an adversary system and guarantees of the equality of the opposing parties, glasnost, presumption of innocence, protection of judges, procurators and investigators from any pressure or interference with their work and strengthening of the role of lawyers are consistent with the recommendations of the United Nations.

3. A Criminal Code of the Byelorussian SSR is currently being prepared in the Republic on the basis of the principles of legality, humanism, democracy, justice, non-evasion of responsibility and equality of citizens before the law. Both this code and the others now being drafted will take full account of all international standards in the field of human rights.

4. It should be emphasized that the codes of the Byelorussian SSR currently in force or being drafted stipulate that, if an international treaty or agreement to which the Byelorussian SSR is a party establishes other rules than those contained in the Republic's legislation, then the rules of the international treaty or agreement shall apply in its territory.

5. In our view, the idea of elaborating model texts of legal instruments within the United Nations for use in national legislations deserves to be endorsed and put into effect. We believe that such model texts should take into account the specific political, economic and social conditions of particular countries or groups of countries and the characteristic features of their legal systems. They could be prepared within the framework of appropriate, specially constituted United Nations bodies which would reflect the experiences of various countries and peoples.

B. Netherlands

[29 May 1990]
[Original: English]

The Netherlands submits that the Working Group on Detention devote some time to the elaboration of rule 9 of The Safeguards, guaranteeing protection of the rights of those facing the death penalty, in order to assess what types of treatment may cause additional suffering for detainees sentenced to death, taking due account of the opinion of the Human Rights Committee of 6 April 1989 in cases No. 210/1986 and 225/1987, indicating that in certain cases long delay between final sentencing and execution of the sentence may constitute inhuman or degrading treatment.

C. Tunisia

[20 April 1990]
[Original: French]

1. Information relevant to the question is contained in Tunisia's third periodic report on the implementation of the International Covenant on Civil and Political Rights, due to be considered by the Human Rights Committee on 16 and 17 July 1990.
2. The report, issued as document CCPR/C/52/Add.5 and dated 12 June 1989, describes the application of the relevant United Nations rules both in its general introduction and in the subsequent sections, where several paragraphs provide detailed replies concerning the information requested.
3. For example, in chapter I of the report, on respect for general commitments, developments relating to the administration of justice are described in section B.
4. Lastly, other developments pertinent to the question are described in chapter II of the report, on respect for commitments concerning rights recognized by the Covenant. By way of illustration, section I of this chapter deals at length with safeguards for the administration of justice (paras. 91-105).

II. SPECIALIZED AGENCIES

A. International Labour Office

[1 June 1990]
[Original: English]

1. International Labour Office standards relevant to the question are those concerning prison labour, under the provisions of the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105).
2. Article 2, paragraph 2 (c) of Convention No. 29 provides that, for the purposes of the Convention, the term "forced or compulsory labour" shall not include "any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations".
3. The ILO Committee of Experts on the Application of Conventions and Recommendations has provided further comments on conditions to be observed in regard to the exaction of prison labour, in accordance with Convention No. 29.
4. The Committee has thus considered that it follows from the terms "as a consequence of a conviction in a court of law" that persons who are in detention but have not been convicted - such as prisoners awaiting trial or persons detained without trial - should not be obliged to perform labour (as distinct from certain limited obligations intended merely to ensure cleanliness). It also follows from the use of the term "conviction" that the person concerned must have been found guilty of an offence. In the absence of such a finding of guilt, compulsory prison labour may not be imposed, even as a result of a decision by a court of law. Conversely, compulsory labour imposed by administrative or other non-judicial bodies or authorities is not compatible with Convention No. 29.
5. Regarding conditions governing the use of prison labour, the Committee of Experts has considered that the provisions of Convention No. 29, which prohibit convict labour from being hired to or placed at the disposal of private individuals, companies or associations, are not limited to work outside penitentiary establishments but apply equally to workshops which may be operated by private undertakings inside prisons. The Committee of Experts has further considered that the use of labour of convicted persons by private employers would be compatible with Convention No. 29 only if it was subject to the consent of the prisoners concerned and to necessary safeguards, such as the payment of normal wages and social security coverage.
6. Convention No. 105 prohibits the use of any form of forced or compulsory labour in five specific cases. Three of these (paras. (a), (c) and (d) of Article 1) relate to the use of forced or compulsory labour as a sanction or punishment, namely "as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system"; "as a means of labour discipline"; and "as a punishment of having participated in strikes".

7. The Committee of experts has considered that prison labour exacted from a person convicted in a court of law for activities falling within any of the three cases covered by the above provisions of Convention No. 105 is compatible with that Convention.

8. The Committee of Experts has also considered as contrary to Convention No. 105, prison labour exacted from convicted persons in the other two cases stipulated by Article 1, paragraphs (b) and (d) of the Convention, namely "as a means of mobilizing and using labour for purposes of economic development" and "as a means of racial, social, national or religious discrimination".

9. More detailed information on the subject of prison labour under the terms of the two above Conventions may be found in the 1979 General Survey by the Committee of Experts on the abolition of forced labour (International Labour Conference, sixty-fifth session (1979), report III (part 4B)), in particular paragraphs 90 to 101 as regards Convention No. 29 and in paragraphs 102 to 109 and seq. as regards Convention No. 105. The position of countries referred to in footnotes to these paragraphs of the survey may, however, have evolved since 1979.

10. The comments and information given above as regards the relevant standards of Convention Nos. 29 and 105 have a bearing, more especially, on the application of the provisions of the Standard Minimum Rules for the Treatment of Prisoners, in particular Rule 71(2), which provides that "all prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer".

B. United Nations Educational, Scientific and
Cultural Organization

[5 May 1990]

[Original: English]

1. The Division of Human Rights and Peace of UNESCO is co-operating with the "Institut de formation aux droits de l'homme du barreau de Paris" in organizing a meeting, to be held in Paris on 5 October 1990, of directors of training institutes in human rights so as to exchange information, ideas and experience in this field, in particular with regard to the training of lawyers and magistrates. This can contribute to improve the administration of justice, with due and full respect for human rights.

2. In pursuance to General Conference resolutions 24 C/Resolution 13.1, and 25 C/Resolution 7.6, UNESCO has requested the International Federation of Senior Police Officers to prepare a report on human rights and the police, in particular so as to strengthen and encourage human rights education in police academies and to design curricula to this end. The report, once ready, will be addressed to the United Nations Centre for Human Rights.

C. World Health Organization

[12 June 1990]

[Original: English]

While WHO supports the basic principles expressed in the above resolutions, the Organization, in accordance with its mandate, would have hardly any role to play in the practical implementation of the norms and standards in the field of administration of justice and human rights. We wish, however, to express our support for the Commission in its work on this issue.
